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COMMENTS AND RECOMMENDATIONS

of the

STATE OF COLORADO

on the

INITIAL DEVELOPMENT, GUNNISON-ARKANSAS PROJECT
ROARING FORK DIVERSION, COLORADO

(Project Planning Report No. 7-8a.49-1, Bureau of Reclamation, Department of the Interior, dated January, 1950)

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August 1951

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(Project Planning Report No. 7-8a.49-1, Bureau of Reclamation,
Department of the Interior, dated January, 1950)

August 7, 1951

The Secretary of the Interior

Sir:

On behalf of the State of Colorado and pursuant to Section 1 of the Act of December 17, 1944 (58 Stat. 887), there are herewith transmitted the comments, views and recommendations of the State of Colorado concerning the initial development of the Gunnison-Arkansas Project, Roaring Fork Diversion, being Project Planning Report No. 7-8a.49-1, Bureau of Reclamation, Department of the Interior, dated January, 1950.

These comments, views and recommendations are submitted under the authority of Chapter 265, Session Laws of Colorado, 1937, creating the Colorado Water Conservation Board, and defining its functions in accordance with the designation of such Board by the Governor of the State of Colorado pursuant to Section 1 of the Act of December 17, 1944 (58 Stat. 887) as the official State agency to act in such matters.

The comments, views and recommendations of Colorado submitted herewith are as follows:

1. Colorado recognizes that the waters of the Arkansas River in the Colorado portion of the Upper Arkansas River Basin are over-appropriated and that serious loss in crop production on presently irrigated farm land results. Stabilized agricultural economy in the area requires supplemental water supplies. Additional quantity and better quality of domestic and municipal water are critically needed in the Arkansas Valley, Colorado, for the cities of Colorado Springs, Pueblo and various Valley towns. New sources must be found if necessary and dependable water supplies for a growing population are to be provided. The best economy and the most efficient use of limited sources of water require multiple-use project development which will serve the needs of agriculture,

requirements for domestic and municipal water supplies, flood control, the preservation of recreational and fish and wildlife values and the production of hydroelectric power. Neither further retirement of presently irrigated land to meet necessary and pressing municipal requirements for water nor project development designed to serve a single purpose would be consonant with the most desirable economic advancement of Colorado, or with the highest utilization of its limited water supplies.

2. Colorado concurs in the findings of the Project Report that the project described therein is engineeringly feasible, economically justified, and financially feasible, and that the proposed plan for the payment of reimbursable capital costs is in accordance with the Federal reclamation law.

3. The allocation of capital costs as between the various project features, including a nonreimbursable allocation to flood control and fish and wildlife preservation, is considered reasonable.

4. It is recognized that the allocation to the various project purposes of annual operation, maintenance and replacement costs has been made to correspond to the allocation of capital costs. Colorado recommends that an authorization of the project shall not preclude a readjustment of operation, maintenance and replacement charges as between municipal and domestic users and power and irrigation users which might more accurately reflect the actual use of water by said users.

5. It is also recommended that the authorization of the project include the Valley Pipe Line as referred to in said report for the use and benefit of the various Valley towns.

6. Colorado calls attention to the fact that the project, its operation, maintenance and the use of Colorado River water thereunder, must be subject to the provisions of the Colorado River Compact of November 24, 1922 (House Document 605, 67th Congress, Fourth Session), the Upper Colorado River Basin Compact of October 11, 1948 (Public Law 37, 81st Congress, First Session), and the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057-1064). Further reference to this matter appears in these comments in connection with the subject of "Operating Principles." The features of the project and their operation for the storage and re-regulation of the native waters of the Arkansas River are subject to the provisions of the Arkansas River Compact of December 14, 1948 (Public Law 82, 81st Congress, First Session) between Colorado and Kansas. On July 24, 1951, the Arkansas River Compact Administration, an agency created by the Compact for its administration, after a review of the project report and consideration of the effect of the operation of the proposed project on the administration of the provisions of the Compact, adopted the following resolution:

> "WHEREAS there has been submitted to the States of Colorado and Kansas by the Secretary of the Interior, in accordance with provisions of Section 1 of the 1944 Flood Control Act, a report of the Bureau of Reclamation on the proposed Initial Development, Gunnison-Arkansas Project, Roaring Fork Diversion, Colorado (Project Planning Report No. 7-8a.49-1) and such States are required to transmit to the Secretary of the Interior

their respective official comments and recommendations on the report and proposed development; and

"WHEREAS the Arkansas River Compact Administration, an official interstate body created by the Arkansas River Compact and charged with the administration of such Compact, is interested in the proposed development to the extent that its construction and operation shall not interfere with the rights, interests and obligations of Colorado and Kansas under the Compact;

"NOW BE IT RESOLVED by the Arkansas River Compact Administration that the following comments and recommendations relating to said report of the Secretary of Interior, to wit:

"The Arkansas River Compact Administration submits these comments and recommendations to the Governors of Colorado and Kansas respecting the proposed Initial Development, Gunnison-Arkansas Project, Roaring Fork Diversion, Colorado, namely:

"1. The Administration understands that the project plan proposes:

"(a) The importation by appropriate project works of approximately 70,000 acre-feet of water a year from the Colorado River Basin to the Arkansas River Basin for supplemental irrigation and domestic water supplies in Colorado and for the production of hydroelectric energy.

"(b) In connection with such importation of water and its regulation in the Arkansas River Valley by project works, the re-regulation of native waters of the Arkansas River (the term 'native waters,' as herein used, being those waters covered and defined by Art. III-B of the Arkansas River Compact).

"2. The interstate water relations of Colorado and Kansas with respect to the Arkansas River do not justify any objection to the proposed project development for the importation of Colorado River water (described in sub-paragraph (a) above).

"3. The re-regulation of native waters of the Arkansas River (native waters being as above mentioned) concerns the Arkansas River Compact Administration and both Colorado and Kansas in complying with the provisions of the Arkansas River Compact and maintaining the benefits and obligations of the two states under that Compact. To that end, it is recommended to the Governors of Colorado and Kansas, and expressed as a policy of the Arkansas River Compact Administration, that the Initial Development, Gunnison-Arkansas Project, Roaring Fork Diversion, Colorado, as set forth in

Project Planning Report No. 7-8a.49-1 of the Bureau of Reclamation, be approved; provided, however, that there shall be no re-regulation of native waters of the Arkansas River as proposed in such report until a plan of operation, rules, regulations, procedures and agreements in furtherance thereof, including any pertinent agreements between the Corps of Engineers and the Bureau of Reclamation, shall have been submitted to, and approved by, the Arkansas River Compact Administration and the affected water users.

"4. It is the purpose and intent of these recommendations that the proposed project development shall not interfere with or defeat the rights, interests and obligations of Colorado and Kansas under the Arkansas River Compact.

"be transmitted to the Governors of the States of Colorado and Kansas and such Governors be and are hereby requested to submit the same to the Secretary of Interior with their official State comments and recommendations upon said proposed project and development."

Colorado interprets and understands that Paragraph three (3) of the Resolution of the Arkansas River Compact Administration is controlled by Paragraph four (4) thereof; and that the words "affected water users" in said Paragraph three (3) mean only water users in the State of Colorado so long as Colorado complies with the terms of said Compact.

7. Paragraph 74, pages 27 to 33, both inclusive, under the heading "Operating Principles," contains the "Operating Principles" which the report explains were recommended by a Policy and Review Committee set up by the Colorado Water Conservation Board to study and review plans and reports on the first stage of the Gunnison-Arkansas Project. This committee was composed of representatives of the Board, the Colorado Game and Fish Commission, Western Colorado, the Arkansas Valley and the City of Colorado Springs. The report fails to explain that such committee was required to report to the Colorado Water Conservation Board and its recommendations would not be effective until approved by that Board. The report on the project does not disclose what action was taken by the Board nor does it contain all of the recommendations of the Policy and Review Committee. Some of the matters contained in the report of the committee are not strictly concerned with project operation, but are related to, and constitute a material part of, such "Operating Principles."

The recommendations of the Policy and Review Committee were revised and approved by the Colorado Water Conservation Board on February 22, 1951. (See letter with attachments of the Director of the Colorado Water Conservation Board dated February 27, 1951, and addressed to the Director of Region 7, Bureau of Reclamation). Paragraph 74, pp. 27 to 33, both inclusive, of the report correctly sets forth that part of the report of the Policy and Review Committee, designated Article II "Operating Principles," as revised and approved

by the Colorado Water Conservation Board, but it omits other material portions of the Committee's report as revised and approved by the Board, namely:

* * * * * * *

"The action of the Policy and Review Committee will be presented to the Colorado Water Conservation Board for such action as the Board deems proper.

"The action of the Colorado Water Conservation Board will be incorporated in the official comments of the State of Colorado, made pursuant to Section 1 of the 1944 Flood Control Act.

"The authorization of the project will recognize the Operating Principles approved by the Colorado Water Conservation Board.

"Prior to commencement of project construction, the following conditions precedent must be satisfied.

"(a) There will be executed a payment contract between the Eastern Colorado Conservancy District and the United States in which will be incorporated the approved Operating Principles.

"(b) There will be executed such contract with the Twin Lakes Reservoir and Canal Company as is necessary to make effective the approved Operating Principles.

"(c) The Eastern Colorado Conservancy District will firmly bind itself to the operation of the project in accordance with the approved Operating Principles.

* * * * * * *

"It is recommended that this project shall hereafter be referred to as the Fryingpan-Arkansas Project. Approval of this provision by Eastern Colorado representatives shall not be implied as an abandonment of their expressed intention to obtain approval of a project from the Gunnison River nor shall approval of this provision by Western Colorado representatives be construed as any consent on their part to the authorization of a project for the exportation of water from the Gunnison River to Eastern Colorado.

"The Committee recognizes that the approval of this report is not to serve as a precedent or example for the approval of any other trans-mountain diversion of major proportions not heretofore authorized.

"The policy of the State of Colorado as initiated in statewide meetings held under the auspices of the State Planning Commission at Denver and

Grand Junction, and as evidenced by resolutions dated June 15, 1935, and February 28, 1936, was not adhered to because surveys of the character mentioned in said resolutions were not available to the Committee. Nothing herein contained shall be deemed or construed as a precedent for Federal projects not heretofore authorized until adequate surveys have been made and the necessary data are available so that a general allocation or apportionment of the waters of the Colorado River, allocated for consumptive use in the State of Colorado, under the Upper Colorado River Basin Compact, may be made between Eastern Colorado and Western Colorado, as distinguished from an attempt to execute such State policy by a piecemeal or series of partial allocations, any of which may seriously interfere with a complete, over-all State program."

Paragraph 88 of the report under the heading "Recommendations," states:

"E. The project be operated under the direction of the Secretary of the Interior in accordance with the Operating Principles set forth in this report or as Principles may be modified in the future by agreement between the Secretary and the Commission established by the State of Colorado."

It is understood that the Operating Principles, mentioned in this quotation from the report, are those set forth in Paragraph 74, pp. 27 to 33, both inclusive, and that the "Commission" mentioned therein is the Commission which may be created in the manner and for the purpose set forth in Paragraph 17 of the Operating Principles. (See p. 33 of the report.)

Colorado's approval of the plans set out in the report and of the authorization of the project is conditioned upon compliance with the Operating Principles set forth in the report (see Paragraph 74, pp. 27 to 33, both inclusive) and also full recognition and compliance with those portions of the Policy and Review Committee's report, as revised and approved by the Colorado Water Conservation Board, which are omitted from the report and which are hereinabove set out; except that as to the name of the project, it is recommended and urged that in an appropriate manner the project should hereafter be known and referred to as the "Fryingpan-Arkansas Project." It is noted from the letter of the Commissioner of Reclamation to the Secretary of the Interior, contained in the report, that it is stated:

" * * * * This development is designed as a self-contained unit, and its construction would not imply a commitment for developing future water supplies in the Gunnison River Basin for diversion to the Arkansas River Basin."

Colorado approves this statement but such a statement lends weight to the reason for changing the name of the project as herein recommended. Diversion from the Fryingpan River to the Arkansas River has no relation to the Gunnison River. It is not proposed under this "self contained" project to divert water to the Arkansas Basin from the Gunnison River. The identification of the project on the cover of the report and used throughout the report --

"Initial Development, Gunnison-Arkansas Project, Roaring Fork Diversion, Colorado" — is a misnomer and misleading, and in the future may, in some manner, lead to unwarranted implications. In addition to the recommended change in project identification, Colorado requests that the project be authorized as the "Fryingpan-Arkansas Project."

8. The Colorado River Water Conservation District is an agency created by State statute (Chapter 20, p. 997, Session Laws of Colorado, 1937) for the conservation, use and development of the water resources of the Colorado River and its principal tributaries. The area comprised within the District includes seven counties and a part of an eighth county within the natural drainage of the Colorado River in Western Colorado. The Southwestern Water Conservation District is an agency created by State statute (Chapter 231, p. 866, Session Laws of Colorado, 1941) for the conservation, use and development of the water resources of the San Juan and Dolores Rivers and their principal tributaries. The district comprises seven counties and a part of an eighth county within the natural basin of the Colorado River in Western Colorado. When the Board of Directors of each of these two districts passed upon the report and recommendations of the Policy and Review Committee, including the "Operating Principles," as revised, their separate resolutions, among other things, contained the following language:

Colorado River Water Conservation District Board

"BE IT FURTHER RESOLVED, that in the opinion of the Board of Directors of the Colorado River Water Conservation District, the Colorado Water Conservation Board should adopt a resolution that no further federally financed transmountain diversions from the natural Colorado River Basin should be approved for authorization until the surveys described in said Section IV above are completed and the need for the use of water in Western Colorado has been determined." (Section IV, to which reference is made, is shown by the two paragraphs contained in the report of the Policy and Review Committee, quoted on Page 5 of these comments, and commencing with the words "The Committee recognizes" and "The policy of the State," respectively.)

Southwestern Water Conservation District Board

"* * * * * this Board feels it should interpose no objection to the proposed diversion, but with the clear and distinct understanding this consent shall not be considered as waiver of objections to any other federally financed transmountain diversion of the waters of the Colorado River; and with the further understanding that the State Water Conservation Board of the State of Colorado shall not approve of any other such federally financed diversion project until the studies of the needs of the Western Slope be fully completed so that an intelligent decision relative to such needs may be given. We feel that after the many and long delays in making such studies and the promises made by some high in authority in the Reclamation Service, the Western Slope is entitled to have such

studies completed in the very near future, and that no further federally financed transmountain diversions should be made without the completion of such investigations."

At the meeting of the Colorado Water Conservation Board on February 22, 1951, when the revised report of the Policy and Review Committee, including revised "Operating Principles" for this project, was approved by the Colorado Water Conservation Board, the Board unanimously approved two motions which provided that the resolutions, above mentioned and partially quoted, submitted by the Colorado River Water Conservation District and the Southwestern Water Conservation District be accepted and approved as a policy of the Colorado Water Conservation Board.

9. Paragraph 68 commencing on Page 23 in about the middle thereof states: "The proposed basic rate of $3.60 per acre-foot at the Pueblo Reservoir has been determined to be within the payment capacity of the water users." It is respectfully requested that such proposed charge should not constitute either a maximum or a minimum charge nor should it indicate a uniform charge or indicate where water will be used or whether or not consideration in fixing charges can be given to return flows from such use. The figure is purely an estimated average charge per acre-foot and the district in allocating such water should be allowed complete latitude in connection therewith.

10. Paragraph 68 as contained on Page 24 has the following sentence: "The district would assume responsibility for delivery of irrigation water." This responsibility is certainly not that of the United States, but neither should the district be responsible for patrolling every ditch. If water is turned out from the Reservoir, it is immediately subject to the control of the State water officials, who should be advised of such rights in water and who are charged with the responsibility of delivering the same to the correct ditch. It is contemplated that each ditch will do its own policing.

11. Attention is directed to Paragraph 68 on Page 24 and the sentence reading "This district or possibly another entity would contract with the government for federal construction of the specific municipal water system. . ." It is contemplated that a proper repayment entity under Colorado laws such as a metropolitan water district may be created for this particular purpose or that a joint contract executed between the various municipalities utilizing this feature will be executed and the project's authorization should be sufficiently broad to authorize any such contract deemed desirable.

12. Page 24 in the tabulation on function and source of revenue contains the following:

District tax ($132 million at 1 mill minus 10% $119,000

Attention is directed to the fact that under Colorado law, three possible rates are in existence; one-half of one mill, being the rate prior to delivery

of project water; one mill, being the rate after such project water becomes available, and prior to the time of any deficiency or default; and one and one-half mills in the event of default or deficiency. Levies in any of these three categories may be less but cannot exceed these figures.

13. Attention is directed to Page 24, the item captioned "Municipal and industrial water, municipal supplies (38,000 ac. - ft. at various rates)." It is respectfully pointed out that it may be some years before this amount of water is utilized and that the quantity indicated is but an estimate which may be exceeded ultimately. The authorization of the project should not preclude the possibility of charging municipalities lower rates during the period of time that such water is not actually required for the municipal needs. Pueblo might ultimately require ten thousand acre-feet and desire at the outset to commit herself for the immediate purchase of five thousand acre-feet. Until such time as she actually requires ten thousand acre-feet of water, she should not be charged therewith at the proposed rates. The project authorization should permit charging lower rates until the water is used for municipal purposes.

14. Attention is directed to paragraph 70 on Page 25. It is respectfully suggested that the report makes no reference to potential evaporation savings by moving shallow plains storage reservoirs upstream and storing the same quantities of water at higher altitudes.

15. Attention is directed to a statement in the middle of Page 38, reading:

> "Such contracts should include provisions for the right of renewal thereof once or more than once under stated terms and conditions mutually agreeable to the parties and subject to increase or decrease in rates corresponding to increase or decrease of cost of construction and of operation, maintenance or improvement or deterioration in the payment ability of the water users."

This sentence must be reconciled with the existing Colorado law which is set forth in Chapter 266 of the Session Laws of Colorado 1937, being Section 19 thereof, which requires the petition for allocation of water filed by the water user and addressed to the Conservancy District to contain therein the charge to be imposed for each acre-foot of water. The statute requires the petition to contain the following: (1) name of applicant, (2) quantity of water to be purchased or otherwise acquired, (3) descriptions of lands upon which the water will be used and attached, (4) price per acre-foot to be paid, (5) whether payments will be made in cash or annual installments, (6) agreement that the annual installments and the charges for maintenance and operating shall become a tax lien upon the lands for which such water is petitioned and allotted and to be bound by the provisions of this act and the rules and regulations of the Board. While it was contemplated initially that the price

per acre-foot would be fixed, such as, in the case of the Colorado-Big Thompson Project, $1.50 per acre-foot, it is believed that this statutory provision can be complied with by stating the price per acre-foot shall be not less than $_____ nor more than $_____.

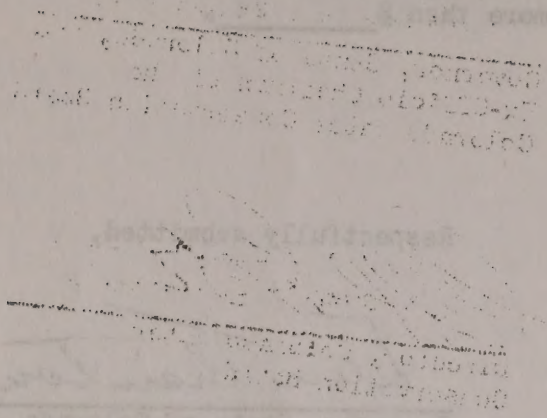
Respectfully submitted,

Dan Thornton

Governor, State of Colorado, and
Ex-Officio Chairman of the
Colorado Water Conservation Board

Clifford H. Stone

Director, Colorado Water
Conservation Board



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